

an acknowledgment by the parties that the Company, in exercising its rights and obligations under this franchise, is an entity controlled by, subject to the control of or acting on behalf of the Town for the purposes of Section 24-91-103.5 et seq., C.R.S.

(d) In the event of litigation for a breach of this franchise or for an interpretation of this franchise, the prevailing party shall be reimbursed for all costs related thereto, including reasonable attorney's fees, by the nonprevailing party.

(e) Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless in any manner inconsistent with the doctrine of comparative negligence in Colorado. (Ord. 1-2001 §11.1; Ord. 2-2005 §1)

#### **Sec. 5-2-300. Notice to Company.**

The Town will provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 1-2001 §11.2)

#### **Sec. 5-2-310. Financial responsibility.**

At the time of approval of this franchise by the Town, and from time to time at the Town's request, but not more frequently than annually, the Company shall submit to the Town, as a confidential document, proof of its ability to meet its obligations under this franchise, including its ability to indemnify the Town as required by this Article. This proof may take the form of insurance coverage, adequate funding of self-insurance or the provision of a bond. The Company shall supply the Town with a list of its insurance companies with the types of coverage, but not

levels of insurance. Said list shall be kept current by annual revisions as of January 1 during the term of franchise. The Town may require from time to time, and the Company agrees to provide, additional reasonable funding of the Company's indemnification obligations as a self-insured, if the Company is acting as a self-insurer. (Ord. 1-2001 §11.3)

#### **Sec. 5-2-320. Payment of ordinance expenses.**

At the Town's option, the Company shall reimburse the Town for reasonable expenses incurred in publication of ordinances, photocopying of documents and other related expenses arising from the negotiations and implementation of this franchise agreement. No such expenses paid or reimbursed shall be surcharged specifically against residents of the Town. (Ord. 1-2001 §11.4)

#### **Sec. 5-2-330. Undergrounding of facilities at expense of Town.**

Upon request by the Town, the Company agrees to underground existing overhead facilities at the Town's expense, except when relocation is otherwise required in accordance with the provisions of Section 5-2-170. (Ord. 1-2001 §12.1)

#### **Sec. 5-2-340. Cooperation with other utilities.**

When undertaking a project of undergrounding, the Town and the Company shall coordinate with other utilities or companies which have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. (Ord. 1-2001 §12.2)



**Sec. 5-2-350. Review and planning for undergrounding projects.**

The Town and the Company shall mutually plan in advance the scheduling of approved undergrounding projects to be undertaken according to this Article as a part of the review and planning for other Company construction projects. The Town and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The Company agrees to use due diligence to see that approved undergrounding projects are, to the extent reasonably practicable, completed prior to the expiration of this franchise. The Company need not approve an undergrounding project if it would create a significant risk to safety or operational integrity, but it shall provide to the Town written notification of any such nonapproval and the grounds therefor. (Ord. 1-2001 §12.3)

**Sec. 5-2-360. Consent of Town required for transfer.**

The Company shall not sell, resell, transfer, assign or convey any rights under this franchise or the assets held by the Company for use under this franchise which are in the public rights-of-way, to any third party, including any merger with such third party, nor undergo any corporate reorganization or other change which would result in any modification of the Company's obligations under this franchise, without first obtaining written approval of the Town; provided, however, that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures or other evidence of indebtedness or the issuance of additional stock, needed or useful for the purpose of financing the system or any portion thereof. Should the Company sell, assign, transfer, convey or otherwise dispose of its rights or interests under this franchise, including the Company's system or capacity on its system, or attempt to do so, without the proper approval, the Town may revoke

this franchise. Upon revocation, all rights and interests of the Company under this franchise shall cease. In addition, any sale, resale, transfer, assignment or conveyance in violation of this Section shall be null and void and unenforceable. For the purposes of this Section, a change of control of the Company is a transfer. (Ord. 1-2001 §13.1)

**Sec. 5-2-370. Town's right to purchase or condemn.**

(a) The right of the Town to construct, purchase or condemn any public utility works or ways and the facilities and rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, is hereby expressly reserved and may be exercised by the Town in accordance with such statutes.

(b) The Company understands and agrees that the right of the Town to construct, purchase or condemn any public utility works or ways, and the facilities and rights of the Company in connection therewith, as provided by the Colorado Constitution, is hereby expressly reserved and that such right may be exercised at any time by the Town.

(c) In the event the Town exercises its option to purchase or condemn, the Company agrees that it will continue to maintain its facilities and to supply any service it supplies under this franchise, in whole or in part, at the Town's request, for up to a twenty-four-month period after the Town has either purchased or condemned the Company's facilities or alternative arrangements have been made. Both parties will exercise due diligence to wind up the affairs as soon as practical.

(d) The Company shall cooperate with the Town by making available such records as will enable the Town to evaluate the feasibility of acquisition of Company facilities. The Company shall not be required to conduct studies or accrue data without reimbursement by the Town,



but shall make such studies if reimbursed its costs for the same. The Company shall take no action which could inhibit the Town's ability to effectively or efficiently use the acquired facilities. (Ord. 1-2001 §14.1)

**Sec. 5-2-380. Negotiated purchase price or condemnation award.**

If the Town desires to purchase Company facilities and if the Company desires to sell such facilities, the parties shall negotiate in good faith to determine a mutually acceptable purchase price for up to ninety (90) days; said purchase price shall exclude the value of this franchise. If agreement is not reached, the Town and the Company reserve all rights to assert their respective positions with respect to the steps the Town would need to take to condemn Company facilities; however, no award shall be made for the value of the franchise. (Ord. 1-2001 §14.2)

**Sec. 5-2-390. Town-produced electricity.**

The Company understands and agrees that the Town expressly reserves the right to obtain or produce electricity for its own purposes and wholesale transactions and the Town may exercise such right at any time. The Company shall not curtail wholesale purchases of Town-generated electricity. (Ord. 1-2001 §14.3)

**Sec. 5-2-400. Purchase of real property of Company by Town.**

If at any time during the term of this franchise, the Company proposes to sell or dispose of any of its real property located in whole or in part in the Town, it shall grant to the Town the right of first refusal to purchase the same. Nothing in this provision shall preclude the Company from disposing of its real property in a timely fashion. (Ord. 1-2001 §14.4)

**Sec. 5-2-410. Purchase or condemnation of street lighting system.**

The provisions of this Article apply with full and equal force to the purchase or condemnation by the Town of all or a portion of the street lighting service provided by the Company, including all or a portion of any Company-owned street lighting facilities, equipment, system and plant. The Company understands and agrees that the Town may choose to so purchase or condemn such street lighting service at any time. (Ord. 1-2001 §14.5)

**Sec. 5-2-420. Breach of franchise.**

(a) If the Company fails to perform any of the terms and conditions of this franchise and such failure is within the Company's control, the Town may require the Company to show cause, at a hearing before the Board of Trustees, the reasons its rights and privileges under this franchise should not be forfeited or other penalties imposed as provided by this franchise or by law. No such hearing shall be held unless the Company has first been given notice of its failure and reasonable time, not to exceed ninety (90) days, in which to remedy the failure. If the Company does not remedy the failure, the Board of Trustees may determine, at such a hearing, whether such failure to perform and the Company's failure to remedy the same occurred, and if so, whether such failure to perform is substantial. The Board of Trustees may impose one (1) or more of the following remedies or penalties for a substantial failure to perform:

(1) A civil penalty of five hundred dollars (\$500.00) for each day or portion thereof in which the Board of Trustees has determined that the failure was committed or continued. The Company understands and agrees that such liquidated damages are intended to compensate the Town for the additional efforts of the Town in administering



and enforcing the franchise, for inconvenience to Town operations and to the residents and loss of confidence in government and morale of the Town and its residents when franchise obligations are not met. Such damages are uncertain in amount and difficult to measure and prove accurately. By this franchise, the Company agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages;

(2) Forfeiture of all rights under this franchise; or

(3) Any other remedies available to the Town by law.

(b) The Town may take action to correct the failure and the Company shall promptly reimburse the Town for the cost of such action.

(c) In the event of judicial action taken by either party to enforce any of the terms or conditions of this franchise, each party shall be responsible for its own attorney fees and costs associated with such action. (Ord. 1-2001 §15.1)

#### **Sec. 5-2-430. Judicial review.**

Any declaration of default by the Board of Trustees shall be subject to de novo judicial review. (Ord. 1-2001 §15.2)

#### **Sec. 5-2-440. Other legal remedies.**

Nothing herein shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged violation of this franchise. (Ord. 1-2001 §15.3)

#### **Sec. 5-2-450. Continued obligations.**

Upon forfeiture, the Company shall continue to provide service to the Town and its residents until the Town makes alternative arrangements for such service. (Ord. 1-2001 §15.4)

#### **Sec. 5-2-460. Approval of franchise.**

The Company shall promptly file in writing its acceptance of this franchise upon approval of this Article by the Board of Trustees. (Ord. 1-2001 §16.1)

#### **Sec. 5-2-470. Terms impacted by legislative and regulatory changes.**

The Town and the Company recognize that the electric utility industry is the subject of numerous restructuring initiatives by legislative and regulatory authorities. Some of the initiatives and changes may have an effect upon the terms that would be adverse to the customers within the Town and/or the Company. In the event of such regulatory changes, the Town and the Company may need to amend various provisions of this franchise and agree to negotiate in good faith in reaching such amendments. (Ord. 1-2001 §16.2)

#### **Sec. 5-2-480. No waiver.**

Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other or any of its officers, employees or agents, upon any one (1) or more occasions, to insist upon or to seek compliance with any such terms and conditions. (Ord. 1-2001 §17.1)

#### **Sec. 5-2-490. Successors and assigns.**

The rights, privileges and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Section 5-2-360. (Ord. 1-2001 §17.2)



**Sec. 5-2-500. Third parties.**

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 1-2001 §17.3)

**Sec. 5-2-510. Representatives.**

The Company and the Town shall designate the persons to whom notices shall be sent regarding any action to be taken under this franchise. All notices shall be in writing and forwarded by mail or hand delivery to the persons and addresses as stated below, unless changed by written notice given to the other. Until change is made, notices shall be sent as follows:

To the Town:

Mayor

To the Company:

General Manager

(Ord. 1-2001 §17.4)

**ARTICLE III****Gas Franchise****Sec. 5-3-10. Short title.**

This Article shall be known and may be cited as the "Rocky Mountain Natural Gas Company Franchise Ordinance." (Ord. 1-1986 §1)

**Sec. 5-3-20. Definitions.**

For the purpose of this Article, the following terms shall have the meaning given herein:

*Board* means the Board of Trustees of the Town of Crawford, Colorado.

*Company* means the Rocky Mountain Natural Gas Company, Inc., the grantee of rights under this franchise.

*Person* means any person, firm, partnership, association, corporation, company or organization of any kind.

*Town* means the Town of Crawford, Delta County, Colorado, the grantor of rights under this franchise. (Ord. 1-1986 §2)

**Sec. 5-3-30. Grant of authority.**

There is hereby granted to the Company the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through the Town a plant or plant and works, for the purchase, manufacture, transmission and distribution of gas, either natural, artificial or mixed, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute gas to the Town and the inhabitants thereof, for heating, cooking or other purposes, by means of pipes, mains or otherwise, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in the Town and over, under, along, across and through any extension of, connection with or continuation of the same and/or over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said Town; provided, however, that the Company shall have no right to construct any building, well or manufacturing facility upon any such street, gas easement or other public property. (Ord. 1-1986 §3)

**Sec. 5-3-40. Excavation and construction.**

The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes, parkways and other public



ways and places under the supervision of the properly constituted authority for the purpose of bringing gas into, within and through the Town, and supplying gas to the Town and the inhabitants thereof and in the territory adjacent thereto; provided, however, that the Company shall locate its plants, works, transmission and distribution structures, equipment, mains and pipes within the Town in a manner to meet with the approval of the Town, and further, in locating said facilities, shall do so in such manner as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets, alleys, or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets, roads or alleys or any other public or private improvement, the Company shall repair at its own expense in a workmanlike manner, subject to the approval by the Town, such sidewalk, graveled or paved street, road, alley or other improvement after the installation of its pipes or other structures. The Company shall use due care not to interfere with or damage any water mains, sewers or other structures now in place or which may hereafter be placed in said streets, alleys or other public places. The Company shall, at its own expense, repair in a workmanlike manner, subject to the approval of the Town, any of such water mains, sewers or other structures which are damaged through the action of the Company; provided, however, that the Town may make such repairs and charge the reasonable cost thereof to the Company. This grant of authority shall apply to all streets and alleys presently platted or otherwise of record; all gas easements presently owned by or dedicated to the Town or the public within the Town limits; other property presently owned by the Town within the Town limits; and future streets,

alleys, gas easements and other property later acquired by or dedicated to the Town and located within the Town limits. The Company shall be responsible to remedy any defects in repair work done by the Company for a period of two (2) years after completion. The Town shall have the right to inspect and supervise any work on Town property and improvements. (Ord. 1-1986 §4)

#### **Sec. 5-3-50. Town held harmless.**

The Company shall so maintain its structures, apparatus, mains, pipe and other equipment as to afford all reasonable protection against injury or damage to persons or property therefrom; and the Company shall save the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the exercise by the Company of the rights and privileges hereby granted. For this purpose, the Company shall maintain public liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00), with an umbrella for not less than one million dollars (\$1,000,000.00), and shall furnish a certificate to the Town so showing; provided that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same. (Ord. 1-1986 §5)

#### **Sec. 5-3-60. Relocation of Company facilities.**

If at any time it shall be necessary to change the position of any gas main or service connection of the Company to permit the Town to lay, make or change street grades, pavements, sewers, water mains or other Town works, such changes shall be made by the Company at its own expense. (Ord. 1-1986 §6)



**Sec. 5-3-70. Nonexclusive right.**

The right to use and occupy said streets, alleys, public ways and places shall not be exclusive and the Town reserves the right to grant the use of said streets, alleys, public ways and places to any person during the period: of this franchise. (Ord. 1-1986 §7)

**Sec. 5-3-80. Service standards.**

The Company shall maintain and operate its plants and system and render efficient service in accordance with the rules and regulations of the Public Utilities Commission and the terms and conditions of this Article, including specifically, but without limitation, the following requirements:

(1) Heating value. Gas sold, supplied and delivered under this franchise shall be maintained at a monthly average of not less than nine hundred fifty (950) British Thermal Units of heat value per cubic foot. A *cubic foot of gas* means that amount of gas which, when saturated with water vapor at a temperature of sixty (60) degrees Fahrenheit and subject to an absolute pressure equal to thirty (30) inches of mercury, at thirty-two (32) degrees Fahrenheit (14.73 pounds per square inch) occupies a volume of one (1) cubic foot. Gas sold under this franchise shall be accurately measured utilizing metering equipment of a type approved by the Public Utilities Commission, which shall also be subject to approval of the Town. The Company will provide the Town with copies of calorimeter and pressure reports on request.

(2) Natural gas. Natural gas shall be furnished to the Town in its natural state as it is produced at the wells, without dilution, except that the Company shall remove such noxious gasses therefrom and add such odorizing agent as may be required by law or regulations of proper authorities.

(3) Expense of adjustment. If, after natural gas has been made available, it should later be necessary to revert to manufactured, artificial or other suitable or mixed gas, the Company shall defray all necessary expenses incident to the adjustment of domestic, commercial and governmental appliances, including the changing or redrilling of orifices and burners.

(4) Maintenance of system. The Company shall maintain its gas plant equipment and distribution system in good condition and repair at all times.

(5) Maps. The Company shall prepare and submit to the Board of Trustees a map showing the location of its distribution system, showing location, size and depth of lines, locations of shutoff valves and gates and all appurtenances incident to the distribution system, so far as such facilities can reasonably be projected. The map shall be kept current by addition of the information hereby required as the system is extended or revised. If the Company fails to keep such map current and provide the required information, the Town can cause such work to be done and charge all cost thereof to the Company.

(6) Service. The Company shall make adequate provision for providing service to customers; and it shall be the responsibility of the Company as provided under Section 5-3-130 hereunder, to extend gas lines to the property lines of customers who have ordered gas. (Ord. 1-1986 §8; Ord. 2-2005 §1)

**Sec. 5-3-90. Supply of gas.**

If, during the term of this franchise, there occurs a failure or partial failure of the supply of natural gas available to the Company because of depletion of such supply, the Company shall



take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the Company and, if unable to procure same, it is hereby authorized to supply artificial or mixed gas for the unexpired term of this franchise. If the Company, within a reasonable period after failure of the supply of natural gas, shall fail to supply to its customers artificial and/or mixed gas, the franchise rights granted herein shall terminate. (Ord. 1-1986 §9)

**Sec. 5-3-100. Service area.**

The Company shall furnish gas within the corporate limits of the Town or any addition thereto, to the Town and to the inhabitants thereof and to any person doing business in the Town or any addition thereto at the rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, filed with or fixed by the Public Utilities Commission or by any other competent authority having jurisdiction in the premises. (Ord. 1-1986 §10; Ord. 2-2005 §1)

**Sec. 5-3-110. Nonpreferential rates.**

The Company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled. (Ord. 1-1986 §11; Ord. 2-2005 §1)

**Sec. 5-3-120. Industrial gas rates.**

The rates to be charged by the Company for industrial gas used in the Town may be lower and different from those charged for gas used for

other purposes, provided that contracts for industrial gas contain a "cut-off" clause which recognizes the preferred right of the other uses over industrial uses. (Ord. 1-1986 §12)

**Sec. 5-3-130. Extension of system.**

The Company shall from time to time, during the term of this franchise, make such enlargement and extensions of its distribution system as the business of the Company and the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for gas service concurrently in effect and on file with the Public Utilities Commission or other competent authority having jurisdiction in the premises. (Ord. 1-1986 §13)

**Sec. 5-3-140. Regulations availability.**

The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of gas and payment therefor, and the interference with or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to ensure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in the office of the Town Clerk and in its office in Denver, Colorado, available to the public, copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect and as filed with the Public Utilities Commission or other competent authority having jurisdiction in the premises. The Town shall have access at all reasonable times to all Company records, reports and plans. (Ord. 1-1986 §14; Ord. 2-2005 §1)



**Sec. 5-3-150. Franchise fee.**

As a further consideration for this franchise and accepted by the Town in lieu of all occupation and license taxes and all other special taxes, assessments or excises upon the pipes, mains, meters or other property of the Company or other levies that might be imposed, either as an occupation tax, license tax, permit fee or charge or for the inspection of pipes, mains, meters or other property of the Company or otherwise, the Company shall pay to the Town a sum equal to three percent (3%) of its annual gross revenue derived from the sale of gas within the corporate limits of the Town, including the revenue received from the sale of industrial gas and excluding the amount received from the Town itself for gas service furnished it and after adjustment for the net write-off of uncollectible amounts and corrections of bills theretofore rendered. Payments of the franchise charge shall be made on or before the first day of March of each year for the calendar year next previous. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Section, the Town Clerk and/or any committee appointed by the Board of Trustees shall have access to the books of the Company for the purpose of checking the gross income received from operations within the Town. It is understood that payment of such franchise charge does not excuse the Company from payment of either sales and use taxes or property taxes, as such taxes are levied from time to time, or from obtaining an excavation permit at no charge to the Company, if required by Town regulations. In the event the Company makes payments to any other municipality pursuant to a franchise, occupation tax or similar taxes, which, in the aggregate are more than three percent (3%) gross revenues of sales to customers within such municipality, the charges due hereunder to the Town shall be increased to an equivalent amount computed on a percentage basis, if any portion of the payments to the other municipality are directly or indirectly expensed or charged to customers within the Town. (Ord. 1-1986 §15)

**Sec. 5-3-160. Town's right to purchase.**

Beginning five (5) years from the effective date of this franchise, and continuing for the balance of the term of such franchise, the Town shall have the right, option and privilege of purchasing the Company's entire plant and distribution system operating in the Town for a purchase price representing the fair market value of the system (the entire system shall include all additions and extensions to the original system). If the parties are not able to agree to the fair market value, such value shall be determined through binding arbitration. In case of such arbitration, each party shall choose one (1) arbitrator and the two (2) arbitrators so chosen shall choose a third arbitrator, who shall chair the arbitration panel. The costs of arbitration shall be divided equally between the parties. The Company and the Town agree to negotiate means to limit severance damages, including acquisition of system and customers outside the Town as reasonable. (Ord. 1-1986 §16)

**Sec. 5-3-170. Acquisition of system.**

The purchase price of the system herein set forth is a method of acquisition of the system by the Town, which is alternative to any other lawful means of acquiring title to the system by the Town; and said right and privilege of purchasing the Company's entire system shall be in addition to all of the rights and privileges granted and reserved to the Town by the laws of the State in all matters relating to franchises. The Board of Trustees may authorize the acquisition of such property outside the Town limits by condemnation or otherwise, as granted by the Colorado Constitution, regardless of whether the system within the Town is acquired pursuant to this Section by condemnation or otherwise. In the event the Town acquires the distribution system, the Company will sell the Town gas for resale upon terms as may be agreed to. (Ord. 1-1986 §17)



**Sec. 5-3-180. Effective date.**

This Article shall be in full force and effect from and after its passage, voter approval and publication, as by law required, upon acceptance thereof in writing by the Company, within thirty (30) days after final passage; and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty (20) years from and after the effective date following final passage. (Ord. 1-1986 §18)

**Sec. 5-3-190. Removal of equipment.**

Upon the expiration of this franchise, if the Company has not acquired an extension or renewal thereof and accepted the same, it may have, and it is hereby granted, the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes and other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, pipes, mains or equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase, condemn or replace them. In so removing said pipes, mains or other property, the Company shall, at its own expense and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes and other public places after the removal of its mains, pipes or other structures. (Ord. 1-1986 §19)

**Sec. 5-3-200. Rates.**

Rates charged by the Company for service hereunder shall be fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management. The Company agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable and compensatory gas rates. The Company further agrees that the system shall be so designed, constructed and sources of gas

utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of gas, reserves and other pertinent conditions. (Ord. 1-1986 §20)

**Sec. 5-3-210. Assignment.**

The Company shall not assign this franchise or the rights granted hereunder, without first obtaining approval of the Board of Trustees. However, this condition shall not be construed to restrict or prevent the issuance of bonds, debentures or other evidence of indebtedness or the issuance of additional stock needed or useful for the purpose of financing the system or any portion thereof. (Ord. 1-1986 §21)

**Sec. 5-3-220. Bond.**

Within fifteen (15) days after the Public Utilities Commission has granted to the Company a certificate of public convenience and necessity and after appeal rights have expired, the Company shall deposit with the Town Clerk a bond in the penal sum of ten thousand dollars (\$10,000.00) executed by the Company with surety to be approved by the Town or an irrevocable letter of credit in said amount issued by a financial institution acceptable to the Board of Trustees, conditioned upon compliance with the excavation and road cut repair requirements set forth in Section 5-3-40 hereinabove, and further conditioned that the Company and its surety shall pay to the Town all costs, expenses and damages resulting to the Town from the failure of the Company to comply with such requirements. Such security may be adjusted, revised or substituted upon consent of the Town. (Ord. 1-1986 §22)

**Sec. 5-3-230. Forfeiture.**

The Town reserves the right to declare a forfeiture of this franchise for the breach of a substantial and material provision thereof. No forfeiture shall be declared until the Company



has had an opportunity to be heard and to correct the alleged breach. Upon failure of the Company to exercise reasonable diligence to correct such condition, the Town may declare this franchise forfeited. In the event that this franchise is forfeited, the Company agrees to continue to render service as theretofore established, for a period of six (6) months, to give the Town time to decide upon its course of action. (Ord. 1-1986 §23; Ord. 2-2005 §1)

**Sec. 5-3-240. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof. (Ord. 1-1986 §24)

**Sec. 5-3-250. Reserved rights.**

The right is hereby reserved by the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power; provided that such regulations shall be reasonable and not destructive to the right herein granted and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises, except as permitted in the exercise of the Town's "home rule" powers granted by Article XX of the Colorado Constitution. This franchise shall be subject to all valid and effective provisions of the Town Charter, whether enumerated herein or not. (Ord. 1-1986 §25)

**ARTICLE IV**

**Emergency 911 System**

**Sec. 5-4-10. Designation of authority.**

The Mayor is authorized to sign the intergovernmental agreement creating an emergency telephone service authority in order to establish and maintain an emergency telephone service system in the County. (Ord. 1-1990 §1)

**Sec. 5-4-20. Emergency telephone charge.**

There is hereby established and authorized an emergency telephone charge as provided by Section 29-11-102(2), C.R.S., in an amount not to exceed the lesser of two percent (2%) of the tariff rate or fifty cents (\$.50) each per month for those portions of the service area for which emergency telephone service is to be provided. Upon recommendation of the emergency telephone service authority, the Board of Trustees may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission. (Ord. 1-1990 §2; Ord. 2-2005 §1)

**Sec. 5-4-30. Collection of charge.**

Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101 et seq., C.R.S. (Ord. 1-1990 §3)

**Sec. 5-4-40. Effective date.**

This Article shall not be effective until the intergovernmental agreement creating the emergency telephone service authority and concerning the implementation of an emergency telephone service system is signed by representatives of all parties to the agreement. (Ord. 1-1990 §4)



**ARTICLE V****Telephone System****Sec. 5-5-10. Grant of franchise.**

(a) Delta County Tele-Comm, Inc., its successors or assigns ("DCTC"), is hereby granted the right, power, authority and privilege to build, construct, equip, own, maintain and operate in the Town wires, lines, poles, arms, appurtenances and fixtures for conducting a telephone business and exchange. It is also granted the right, authority, power and privilege to use all streets, alleys and public grounds of the Town now owned or hereafter acquired, subject to such restrictions as may now or hereafter be imposed by law or by the Board of Trustees, for the purpose of erecting and maintaining poles, constructing lines, operating telephone lines, a telephone system, telephone exchange or doing any of the things herein authorized, granted or empowered.

(b) DCTC is granted the right to buy, purchase, lease, erect, equip, maintain, own or operate such plants, machinery, equipment or buildings as are necessary to maintain and operate such telephone lines, telephone system or exchange; the right to buy, hold, own or lease any and all real estate necessary to conduct such business; the right to furnish telephone service to the people, firms and corporations of the Town; the right to connect with other telephone lines within the Town; the right to own and conduct a rural telephone exchange; the right to do switching for any person, firm, or corporation; the right to conduct a telephone toll business; the right to furnish telephone power and service to any person, firm or corporation; and such other and further rights as are usually granted to and enjoyed by telephone companies. (Ord. 3-1992 §1)

**Sec. 5-5-20. Location of system.**

Said wires, lines, poles, arms, appurtenances and fixtures shall be erected by DCTC subject to the approval of the Board of Trustees and whenever possible shall be placed, erected and constructed in the alleys and shall be so placed and constructed as not to interfere with the use of the streets or alleys. DCTC may make such excavations in the streets and alleys as are necessary for erecting and repairing such poles and cable (including underground cables), subject at all times to the rules, ordinances and resolutions of the Town. When poles are placed or erected in paved streets, DCTC shall restore the paving at once to as good a condition as before said work was done. All wires shall be mounted on insulators. The Board of Trustees may, whenever it deems that the public health, safety or convenience so requires, order such wires, lines, poles, arms, appurtenances and fixtures or any of them removed from the street and alleys at the expense of DCTC, or may if it sees fit order them removed from one (1) place and may then grant the privilege of constructing them in another. DCTC is hereby given permission to place all or any of its wires underground at any time. DCTC shall hold the Town free and harmless from all damages, costs and expenses that may arise by reason of the negligence, carelessness or misconduct of DCTC, its agents or employees in erecting, maintaining or operating said plant or because of the placing of said wires, lines, poles, arms, appurtenances and fixtures used in connection with said plant. DCTC is hereby authorized and empowered to trim at its own expense the trees extending into any street, alley or public ground to prevent the limbs or branches from interfering with its wires. (Ord. 3-1992 §2)



**Sec. 5-5-30. Relocation of equipment.**

Nothing herein shall be construed to prevent the Town and its proper authorities from sewer-ing, guttering or improving its streets and alleys and for that purpose to require DCTC to remove its wires, lines, poles, arms, appurtenances or fixtures to conform thereto and facilitate the same. The Board of Trustees reserves the right to cause DCTC to move any wire, line, pole, arm, appurtenance or fixture whenever it deems that the public interest requires their location elsewhere having due regard to the equities of the parties concerned. The expense of such removal is to be borne and paid for by DCTC. (Ord. 3-1992 §3)

**Sec. 5-5-40. Franchise fee.**

As consideration for this franchise and as payment for the privileges granted hereby, DCTC shall pay to the Town, during the term of this franchise, a sum equal to three percent (3%) of the gross monthly subscriber billings within the Town, less uncollectibles; which franchise fee shall be remitted to the Town on a monthly basis no later than the twentieth of the month following each billing period. For the purpose of ascertaining or auditing the correct amount to be paid hereunder, the Town Clerk or any committee or agent appointed by the Board of Trustees shall have access to the books and records of DCTC for the purpose of verifying the gross monthly subscriber billings within the Town from which the franchise fee is computed. The franchise fee provided hereinabove is a contractual payment and is not intended to be a levy or assessment under authority of the Town to impose any general or specific tax. The payment of the franchise fee does not excuse DCTC from the payment of either sales and use taxes or property taxes as such taxes are levied from time to time, or from obtaining an excavation permit, at no charge to DCTC, as required by the ordinances and regulations of the Town. (Ord. 3-1992 §4)

**Sec. 5-5-50. Effective date.**

The franchise granted hereby shall become effective upon the acceptance of the terms hereof by DCTC as provided in Section 5-5-50 above and shall terminate on July 11, 2004. (Ord. 3-1992 §6)